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May 28, 1999

**FOR SETTLEMENT PURPOSES ONLY**  
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Sherry Estes, Esq.  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region V  
77 West Jackson Boulevard (C-29A)  
Chicago, IL 60604

**RE: Skinner Landfill**

Dear Ms. Estes:

As you may be aware, Texaco Inc. entered into a *de minimis* settlement agreement earlier this year with the Plaintiffs in the Skinner Landfill private cost recovery action in the United States District Court for the Southern District of Ohio. In addition to providing for settlement of Plaintiffs' claims regarding their past costs at the Skinner Site, that agreement requires certain of the Plaintiffs to seek to negotiate a *de minimis* settlement between Texaco Inc. and the United States (on behalf of the U.S. Environmental Protection Agency ("EPA")) that is at least as protective of the company's interests as are the terms of EPA's Model *De Minimis* Consent Decree set forth in the December 7, 1995 Federal Register.

It is Texaco Inc.'s understanding that EPA, Region V has now determined what information it will require in order to determine that Texaco Inc. qualifies for a *de minimis* settlement at this Site. That information consists of: (i) the summary of each *de minimis* settlor's waste-in volume and percentage share of Site costs, as determined by the Allocator in the Final Allocation Report from the Skinner Alternative Dispute Resolution process, and (ii) the narrative description of the Allocator's findings for each *de minimis* settlor, as set forth in the Preliminary Allocation Report and, where the Allocator supplemented or altered those findings in the Final Allocation Report, the Final Allocation.




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Accordingly, I am enclosing the information requested by EPA for Texaco Inc. I believe that this information amply demonstrates that Texaco Inc. is entitled to a *de minimis* settlement consistent with EPA's model *de minimis* settlement decree. Texaco Inc. understands that EPA and Plaintiffs in the private cost recovery litigation will allocate among themselves the monies to be paid by Texaco Inc. in settlement of the claims of Plaintiffs and the United States. By making this settlement offer, Texaco Inc. does not acknowledge any liability for response costs at the Skinner Site. In fact, Texaco has had no connection with the Site, as the Allocator verified after careful review of Texaco's arguments. Texaco Inc. enters into this settlement solely to avoid future transaction costs.

In order to ensure that Texaco Inc. is able to avoid the incurrence of additional transaction costs in connection with the ongoing Skinner cost recovery litigation, Texaco strongly urges EPA to finalize an appropriate *de minimis* settlement as expeditiously as possible. Such timely action would fulfill the statutory objectives of Section 122(g) of CERCLA and EPA's *de minimis* settlement policies, as well as provide needed funds for response actions at the Skinner Site.

Sincerely yours,



R. Scott McCay

cc: Gary D. Meyer - BEA

Enclosures

Final Allocation Recommendations in Alphabetical Order, Skinner Landfill Superfund Site, April 12, 1999

Name Of Party	Solid Waste In Cys	Liquid Waste In Gallons	Solid Waste In Total Cys 372906	Percentage	Liquid Waste In Total Gallons 262252	Percentage	Solid Waste	Liquid Waste	Owner/ Operator & Part of Chem Dyne	Rest of Chem- Dyne	Total 0.00000%
TEXACO INC	0	0	372906	0.0000%	262252	0.0000%	0.00%	0.00%			

**Texaco, Inc.**

Settlement Amount:                \$2,000.00

**Excerpt from Allocator's Preliminary Report :**

Texaco's original link to the Skinner Site was a facility referenced in the nexus package as "at the intersection of Galbraith and Reading Roads," which Texaco interpreted as Reading Road and Galbraith Road in Cincinnati, Ohio. Texaco did not own a facility at this location. At first, Texaco presumed that the business and operations conducted by this facility were retail gasoline sales. According to a Texaco employee working in Cincinnati in the 1960s and 1970s, a "Tressler Comet" station was located at the Reading/Galbraith intersection where a current Shell station is located. The employee mentioned that "Tressler Comet" stations were so similar to Texaco stations that many people confused the two.

During the deposition of Ray Skinner, however, the facility in question was described not as a service station but as an oil terminal. Ray Skinner testified about the dismantling of the oil terminal, identifying it as a Texaco facility. I discuss this testimony below.

Texaco owned and operated a gasoline distribution terminal located at 4201 River Road in Cincinnati, Ohio, not one on Reading Road. This facility was owned by Texaco from at least 1947 to 1987, when it was sold. At this facility, Texaco stored gasoline, diesel fuel and lubricating oils and sold them in wholesale markets. Texaco uncovered no evidence that the terminal ever used the Site to dispose of its waste. Texaco's terminal files showed no relationship with the Site. Current and former Texaco employees who worked at the terminal had no recollection of the Site.

Texaco's former terminal employees recalled hiring the Rumpke entities for general office trash (paper, cardboard) disposal services and Queen City Barrel for drum cleaning (solid 55-gallon drums with residual lubricants falling within the petroleum exclusion of CERCLA). The processes which generated waste materials from this facility were office work and lubricant sales. Texaco did not know the total monthly or annual amount of each material generated; the total amount which may have been transported by the transporter; the time period each transporter was used; the form each material was picked up; or the price charged. No documents existed in Texaco's files to confirm or refute these potential relationships.

Texaco owned or leased, but did not operate, over 100 service stations within 25 miles of the Skinner Landfill Site at various times during the period in question. Texaco had no information about the waste disposal activities of its independent retailers. Texaco's service station files only contain leases and sales agreements with these independent business people. Texaco said that its standard lease states that the disposal of all wastes, including waste oil, is the retailer's responsibility, not Texaco's.

Texaco also explained that its products were distributed by a Mr. R.O. Hidy. Texaco did not have any relationship with Hidy's customers and cannot identify any of these locations. Texaco argued that it cannot be held liable for the waste disposal activities of Mr. Hidy's customers.

**Site Witnesses.** Ray Skinner was the only witness who testified about Texaco. He gave two pieces of testimony. First, he said that John Skinner steam cleaned tanker trailers for Texaco. He said that the former contents of the tanker were fuel oils, "real thick, number 4 or 6 fuel oil." R. Skinner Depo., p. 69.

Second, he said that John Skinner dismantled very large volume oil tanks at a facility along the river in Reading about the time that the Cross County Highway was built. He said that the facility in question was near the Wishing Well restaurant. He said it was a Texaco facility.

**Waste-in Amount.** I am persuaded by Texaco's submittal that the facility described by Ray Skinner was Childe Oil, not Texaco. Texaco provided compelling historic research to demonstrate that there was, indeed, a facility in the general area where Ray Skinner said it was and that had to have been removed to build the Cross County Highway and had a number of aboveground tanks. Texaco provided Sanborn Insurance maps and city directories which document the presence of Eureka Oil Company and then Childe Oil Company at this location. The Wishing Well restaurant was located near the facility. R. Skinner Depo., p. 78-81, 125-26. The tankers that were cleaned out were from this same facility, Mr. Skinner said. R. Skinner Depo., p. 89. Hence, without addressing the fact that Texaco did not sell heavy fuel oil in the Cincinnati area, or Texaco's secondary arguments on the petroleum exclusion and its former bankruptcy, I have decided that, on this record, it is entitled to a zero share.